SBCivil Writ Petition No.276/1995

Ram Prasad
v.
State of Rajasthan & Ors.

Date of Order :: 5th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. N.S.Acharya, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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This petition for writ is directed to challenge validity and propriety of the judgment dated 20.9.1993 passed by Board of Revenue for Rajasthan, Ajmer in two Revision Petitions numbered as 62/Revision/LRA/87/Nagaur and 18/Revision/LRA/87/Nagaur

The factual matrix giving rise to the controversy involved in this petition is that the petitioner is owner of a factory situated in town Nawa at Kuchaman Road in District Nagaur. According to the petitioner in East of road leading to his factory there is a school named as “Smt. Gulab Bai Dhoot Prathmik Pathshala”. The aforesaid school is said to be constructed by respondent No.6 and was handed over to the State Government somewhere in the year 1970. The respondent No.6 and Headmaster of Smt. Gulab Bai Dhoot Prathmik Pathshala complained to the Collector, Nagaur alleging illegal construction of road by the petitioner at the land that is part of khasra No.327 belonging to the school referred above. The Collector, Nagaur referred the complaints above to the Tehsildar

concerned for taking appropriate action. The Tehsildar after having a report from Patwari initiated proceedings under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as “the Act of 1956”) under a notice dated 20.7.1971. Being called upon the petitioner submitted a detailed reply denying any encroachment by him over the land in question. The Tehsildar by an order dated 23.12.1977 held that the way leading to the petitioner's factory is quite old one and being a public way it could not be closed. The Tehsildar also found that the way in question is used by public at large including residents of the area concerned. The Tehsildar while deciding the proceedings under Section 91 of the Act of 1956 also taken into consideration the sanction granted by the Municipal Board, Nawa to the petitioner to get the way tart much back in the year 1956. Accordingly the proceedings under Section 91 of the Act of 1956 against the petitioner were dropped. The District Education Officer, Nagaur as well as the respondent No.6 being aggrieved by the order dated 23.12.1977 passed by the Tehsildar preferred separate appeals before the Collector, Nagaur. The Collector, Nagaur by the order dated 4.6.1982 accepted the appeals and set aside the order dated 23.12.1977 passed by the Tehsildar. The Collector by order dated 4.6.1982 ordered to include the part of land used as way with the land under occupation of Smt. Gulab Bai Dhoot Prathmik Pathshala. The petitioner by way of filing

appeals under Section 76 of the Act of 1956 assailed validity of the order passed by the Collector, Nagaur before the Revenue Appellate Authority (Ist), Jodhpur and those appeals came to be accepted by judgment dated 21.10.1986. The Revenue Appellate Authority while accepting the appeals held that in view of the fact that Municipal Board permitted the petitioner much back in the year 1956 for getting the way tart, it cannot be held that the petitioner made any encroachment on the land pertaining to the school. A challenge was given to the judgment dated 21.10.1986 passed by the Revenue Appellate Authority (Ist) Jodhpur by way of filing revision petitions under Section 84 of the Act of 1956 before the Board of Revenue for Rajasthan, Ajmer. The Board of Revenue by judgment impugned accepted the revision petitions by holding that no relief of right of way in summary proceedings like under Section 91 of the Act of 1956 could be given to the petitioner, therefore, the Revenue Appellate Authority had exceeded his jurisdiction while deciding right of way in an appeal against an order pertaining to the proceedings under Section 91 of the Act of 1956.

While giving challenge to the judgment dated 20.9.1993 passed by learned Board of Revenue for Rajasthan, Ajmer it is contended by counsel for the petitioner that the Board of Revenue erred while holding that the Revenue Appellate Authority granted

the relief of right of way to the petitioner by judgment dated 21.10.1986. It is also contended by counsel for the petitioner that the Board of Revenue failed to appreciate that the petitioner constructed Tar Road much back in the year 1956 and the road was utilised by public at large as way.

A reply to the writ petition has been filed on behalf of respondent No.7 i.e. District Education Officer, Nagaur. Nobody has put in appearance on behalf of the respondent No.6.

In reply to the writ petition filed on behalf of the respondent No.7 it is contended that the way made by the petitioner through the land of the school is dangerous for the school children as it moves through the boundary of the school. It is also averred in reply to the writ petition that the land was allotted to the school by Tehsildar by a sanad and the respondent No.6 constructed a building thereon. It is asserted that the land in question is part of the land allotted to the school.

Heard counsel for the parties.

The Board of Revenue, while accepting the revision petitions preferred by the District Education Officer and the respondent No.6, held that the Revenue Appellate Authority was having no jurisdiction to

grant a right of way in a summary proceedings that too under Section 91 of the Act of 1956. From the facts stated earlier it is clear that the petitioner never claimed any right to way before the Revenue Appellate Authority or under the proceedings initiated by Tehsildar vide the notice dated 20.7.1971. In fact the Tehsildar initiated proceedings under Section 91 of the Act of 1956 treating the petitioner as a trespasser on a public land. The Tehsildar after considering the material available on record by order dated 23.12.1977 reached at the conclusion that no part of public land was encroached by the petitioner and the road leading to the petitioner's factory and houses to so many other persons was in existence from last number of years. The Tehsildar also taken into consideration a sanction granted by the Municipal Board to the petitioner to get the road tart. The Tehsildar accordingly by order dated 23.12.1977 dropped proceedings against the petitioner under Section 91 of the Act of 1956. The appeals preferred by the District Education Officer as well as by the respondent No.6 before the Collector, Nagaur were accepted and the petitioner being aggrieved by the same preferred appeals before the Revenue Appellate Authority (Ist), Jodhpur as allowed under Section 75 of the Act of 1956. The Revenue Appellate Authority accepted the appeals by setting aside the order passed by the Collector and by restoring the order dated 23.12.1977 passed by the Tehsildar. The Revenue

Appellate Authority, therefore, in no manner granted relief with regard to right of way to the petitioner. The Revenue Appellate Authority in fact restored the order passed by the Tehsildar on 23.12.1977 whereby the proceedings under Section 91 of the Act of 1956 were dropped. The Revenue Appellate Authority while accepting the appeals preferred by the petitioner also considered the sanction granted by the Municipal Board to the petitioner to get the road constructed and tart much back in the year 1956. The Revenue Appellate Authority while substantiating his finding held that the road was existing since 1956 i.e. quite earlier to the construction of school building. The finding given by the Revenue Appellate Authority has wrongly been held by the Board of Revenue as the grant of a right to way. As such, the Board of Revenue failed to appreciate the finding given by the Revenue Appellate Authority in correct perspective. The Board of Revenue also failed to consider the fact that the public way in question was existing from last number of years and the Municipal Board, Nawa much back in the year 1956 granted a sanction to the petitioner to get the way tart. This fact also establishes that the way was existing and utilised by public at large from last number of years.

In view of whatever discussed above, I am of the considered opinion that the Board of Revenue erred while holding that a right of way was erroneously

granted to the petitioner in the proceedings under Section 91 of the Act of 1956. This petition for writ, therefore, is allowed. The judgment impugned dated 20.9.1993 passed by the Board of Revenue for Rajasthan, Ajmer in cases No.62/Revision/LRA/87/Nagaur and 18/Revision/LRA/87/Nagaur is quashed. The judgment dated 21.10.1986 passed by the Revenue Appellate Authority (Ist), Jodhpur stands restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.